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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/611,767	07/01/2003	George A. Walrath	25323A	5712

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EXAMINER

TARAZANO, DONALD LAWRENCE

ART UNIT PAPER NUMBER

1773

DATE MAILED: 02/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/611,767	Applicant(s) WALRATH, GEORGE A.	
	Examiner D. Lawrence Tarazano	Art Unit 1773	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 November 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-51 is/are pending in the application.
- 4a) Of the above claim(s) 1-16 and 36-51 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 17-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>7/01/03</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Claims 1-16 and 36-51 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 11/30/2004.
2. The applicant argues that that the claims should be examined together because the additional claims would not create an undue burden. The examiner notes that the applicant did not argue the restriction requirement on the merits. He has provided no valid reasons based on fact why the restriction requirement is in error. The examiner maintains the restriction requirement and makes it final.
3. As correctly noted by the applicants claims 17-35 are pending. The withdrawn claims are not "provisionally canceled", but merely withdrawn. The examiner notes that since the instant claims are method claims, the article claims are not subject to rejoinder with the method claims. The examiner suggests that the applicants cancel the non-elected claims.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
5. Claim 27 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as

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the invention. Since the composition of trademarked or trade named materials can change over time, it is not clear what would be encompassed by recited materials.

Claim Rejections - 35 USC § 103

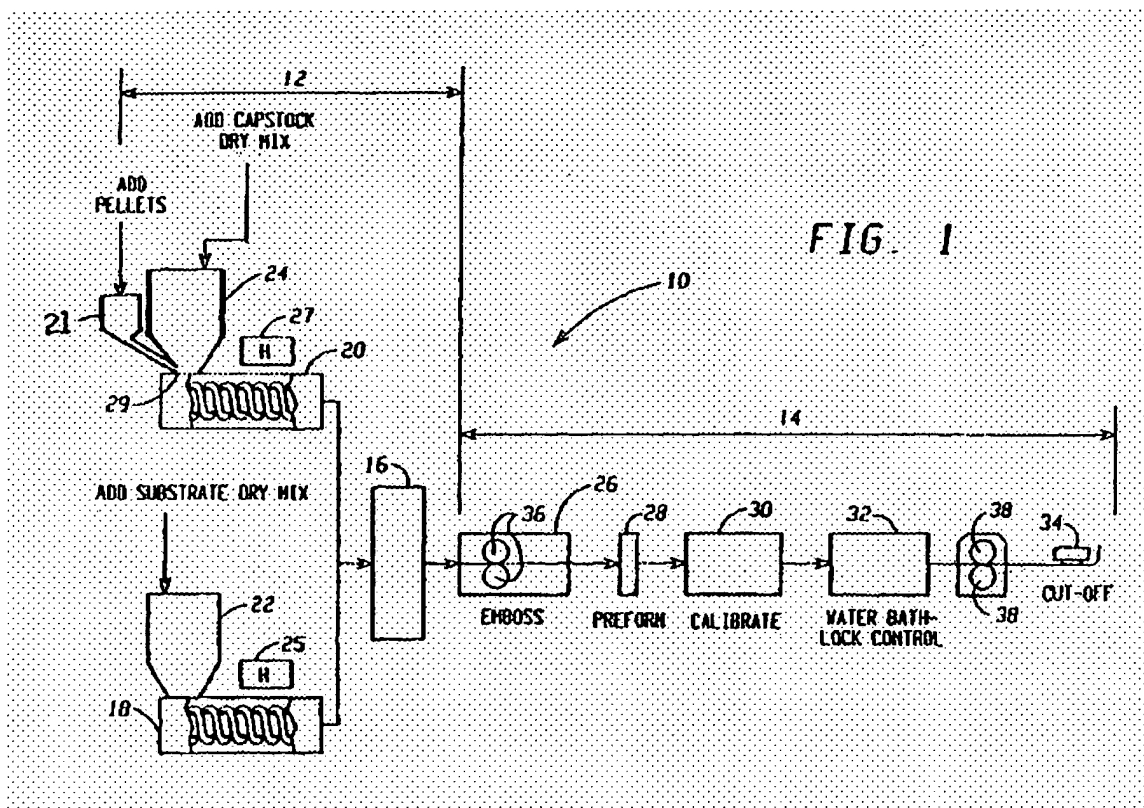
6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 17- 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dorchester et al. (5,869,176).

8. Dorchester et al. clearly teach two-layer vinyl siding made by co extrusion. The siding comprises a base layer and a thin colored layer, wherein the colored layer is made of a blend of particles having different softening temperatures. The difference in temperatures allows the accent color particles to retain their integrity to a greater degree from the bulk particles and allows for streaking to occur as the particles go through the extruder (column 7, lines 36-60).

9. In the system of FIG. 1, the capstock base material is formed by a dry mix of powder-sized particles including resin (e.g., PVC), base color pigment material (if added), and conventional additives (e.g., stabilizers). The mixed capstock is held in the feed hopper 24 and is fed into the throat 29 of the extruder 20. The accent color pellets are added directly to the throat 29 of the extruder 20 from a pellet calibrated feeder 21. The accent color pellets become incorporated with the capstock base material in the extruder 20.



10. The extrusion section 12 includes an extrusion die 16, a pair of screw extruders 18, 20, for feeding material, under predetermined heat and pressure conditions, into the extrusion die 16, and feed chambers 21, 22, and 24, designed to mix and feed material into a respective one of the screw extruders 18, 20. Here, the extruder 18 is designated as the substrate extruder, and the extruder 20 is designated as the capstock extruder.

11. The combined substrate producing material is held in the feed hopper 22 (along with a conventional color concentrate, if desired), and then introduced into the substrate extruder 18. In the extruder 18, the substrate producing material is heated by heating element(s) 25 to soften and melt the substrate material into a viscous state before it is fed into the extrusion die 16. The special accent color pellets are mixed with the capstock base material in the throat 29 of the capstock extruder 20. A conventional color concentrate can also be added to the capstock in the

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feed chamber 24, if desired, and introduced with the capstock into the capstock extruder 20. In the capstock extruder 20, the combined capstock base material and accent color pellets are heated by the heating elements 27 to soften the capstock base material into a molten, viscous state before the combined materials are fed into the extrusion die 16. In the capstock extruder, the color accent pellets begin to soften and disperse. The degree of both softening and dispersion controllably depends on the exact formulation used in the alloy of resins and pigments in the pellets. This introduces the accent color streaks or patterns into the viscous molten capstock. The substrate material and the capstock are fed together into the extrusion die 16. In the extrusion die 16, the viscous substrate material and the viscous capstock (including the accent color streaks produced by the pellets) are coextruded to form a sheet of plastic.

12. The differences between the claimed invention and that of the prior art are as follows:

- a. the applicants require a transparent surface layer
- b. the claimed temperatures, and
- c. the particular "trade named" materials used.

13. The fact that the applicants claim a transparent surface layer with accent particle streaks is not a patentably distinct structure from that that in the prior art. The prior art clearly teaches that the pigments in the surface layer can be varied so it would have been obvious to one having ordinary skill in the art to have varied the combination of materials used based on what appearance was desired. This would include having a transparent surface layer with accent colors as claimed.

14. The variations in the operating temperature of the apparatus and the corresponding melting/ softening points of the resins would merely relate to the appearance of the final product

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and the degree of blending of the color particles with the main resin particles. These types of selections would be well within the ordinary skill of the art and would have been obvious based on the appearance desired.

15. The choice of particular resins would be based on their melting properties. Since they are commercial resins, it would have been obvious to one having ordinary skill in the art to have chosen them depending on the appearance of the product desired.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. Lawrence Tarazano whose telephone number is (571)-272-1515. The examiner can normally be reached on 8:30 to 6:00 (off every other Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Deborah Jones can be reached on (571)-272-1535. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

D. Lawrence Tarazano
Primary Examiner
Art Unit 1773

